IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12343 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JEELUBAHEN ILYASBHAI SANDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12343 of 2002

MR MM TIRMIZI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu has challenged the detention order dated 20th October,

2002. By the said order, the petitioner is detained as a Bootlegger under Prevention of Anti Social Activities Act, 1985. The petitioner is a lady detenu and she is detained in view of her bootlegging activities. The order of detention is challenged by the petitioner by way of this petition.

2. The activity of the petitioner is highlighted in the detention order. There is reference of about 4 criminal cases which are pending against the petitioner under the Bombay Prohibition Act.

3. At the time of hearing of this petition, learned advocate for the petitioner has submitted that on behalf of the son of the petitioner, representation was made on 24th October, 2002, however, there is a delay in deciding the said representation as the same was decided on 15th November, 2002. It is submitted that on this ground the order of detention is required to be set aside.

4. The learned AGP Ms. Nandini Joshi has submitted that the representation was made to the detaining authority and it was sent to the detaining authority by way of RPAD. It is submitted by her that the said representation was received by the Commissioner of Police on 29th October, 2002 and the Commissioner thereafter forwarded the same to the State Government on 2nd November, 2002. The State Government, thereafter received the same on 13th November, 2002 and ultimately, the same was decided on 15th November, 2002. However, it is required to be noted that there is no explanation as to why the detaining authority kept the representation with it up to 2nd November, 2002. This four days' delay in despatching the said representation by the detaining authority to the State Government is not explained even in the reply. It is a well settled position that the representation is required to be decided immediately without any avoidable delay. Since, this delay is not explained even in the reply, the order of detention is required to be quashed and set aside and is accordingly set aside.

5. On the aforesaid view of the matter, the petition succeeds and the same is allowed. The order of detention under challenge is quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith if she is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)

Jayanti*